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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 HARRY T. WHITEHEAD, ) Case No. ED CV 12-0805 GAF (JCG)  
11 Petitioner, )  
12 v. ) **ORDER ACCEPTING REPORT AND**  
13 McDONALD, Warden, ) **RECOMMENDATION OF UNITED**  
14 Respondent. ) **STATES MAGISTRATE JUDGE AND**  
15 ) **DENYING CERTIFICATE OF**  
16 ) **APPEALABILITY**

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17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the  
18 Magistrate Judge's Report and Recommendation, Petitioner's Opposition to  
19 Respondent's Motion to Dismiss, Petitioner's Objections to the Report and  
20 Recommendation, and the remaining record.<sup>1</sup>

21 There is nothing in Petitioner's Objections that would excuse Petitioner's  
22 failure to exhaust his state court remedies. As such, the Court finds that the  
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25 <sup>1</sup> On January 16, 2013, the Magistrate Judge denied as untimely Petitioner's  
26 motion for an extension of time to file his Opposition. [Dkt. No. 32.] On February  
27 4, 2013, Petitioner filed a "Motion to Proceed and Opposition to Motion to Dismiss."  
28 [Dkt. No. 36.] Nonetheless, to the extent Petitioner addresses exhaustion of his state  
court remedies, Petitioner raises the same arguments in both his Opposition and  
Objections. Accordingly, the Court need only address Petitioner's Objections herein.

1 Objections lack merit for the reasons set forth in the Report and Recommendation.

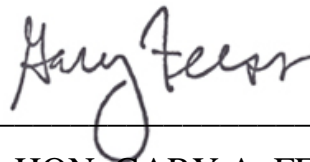
2 Furthermore, to the extent that Petitioner's Objections include a request for  
3 an evidentiary hearing, Petitioner's request is denied. *See Cullen v. Pinholster*, 131  
4 S.Ct. 1388, 1398 (2011); *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("[I]f the  
5 record refutes the applicant's factual allegations or otherwise precludes habeas  
6 relief, a district court is not required to hold an evidentiary hearing.").

7 Accordingly, IT IS ORDERED THAT:

- 8 1. The Report and Recommendation is approved and accepted;
- 9 2. Judgment be entered denying the Petition and dismissing this action  
10 without prejudice;
- 11 3. All pending motions are denied as moot and terminated; and
- 12 4. The Clerk serve copies of this Order on the parties.

13 Additionally, for the reasons stated in the Report and Recommendation, the  
14 Court finds that Petitioner has not made a substantial showing of the denial of a  
15 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*  
16 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate  
17 of appealability.

18 DATED: March 4, 2013



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HON. GARY A. FEESS  
UNITED STATES DISTRICT JUDGE